

Town of Frederick Board of Trustees



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AM 2009-059

TO CONSIDER A DEVELOPMENT AGREEMENT WITH ROCKY MOUNTAIN CHURCH THAT INCLUDES REIMBUREMENTS TO BE PAID BY THE TOWN

Agenda Date: Town Board Meeting – July 14, 2009

Attachments:

- a. Public Improvement Cost Certifications
- b. Figure showing roadway areas
- c. Calculation of reimbursable costs
- d. MOAPI and Exhibits

Fiscal Note: Provided Fiscal note

Marcia Seaman
Finance Director

Submitted by:

Richard L. Leffler, PE
Town Engineer

Approved for Presentation:

Gary R. Johnson for Derek Todd
Town Administrator

AV Use Anticipated

Projector _____ Laptop _____

Certification of Board Approval:

Town Clerk

Date

Summary Statement:

This issue is a consideration by the Board to enter into a Memorandum of Agreement for Public Improvements (MOAPI) with the Rocky Mountain Christian Church, in which the Town will agree to reimburse \$112,597 to the church, and will require future developers to reimburse \$168,379 to the church.

Detail of Issue/Request:

Rocky Mountain Christian Church (RMCC) has recently completed construction of a church facility that is located at 5860 Majestic Street, just west of Colorado Blvd. RMCC has requested that the Town reimburse the church for some of the costs of construction of offsite public improvements. The construction of the public improvements in question has been completed at this time. Specifically, RMCC is asking that the Town reimburse costs associated with the construction of Majestic St., and the south to west bound deceleration and turn lane located on Colorado Blvd. at its intersection with Majestic St.

One of the Town's policies regarding new development is that a developer must pay for public improvements that are necessary to serve the new development. An example of this policy is if a new development were built far from any existing development, then the new development would be required to pay for and construct a new road to the property. It is conceivable as other nearby parcels develop, that those parcels would also use the newly constructed roadway or other infrastructure that was installed by the first developer. It is the policy of the Town to allocate a proportional share of public infrastructure to each new development. This analysis is aided by transportation impact studies or other third party studies that are specific to the type of infrastructure being evaluated. The proportion of the entire cost of an improvement that a single development is required to bear is equal to the adjacent frontage abutting an improvement or the proportion of the total capacity of that improvement which will be utilized by the development. The amount of the proportional cost which is allocated to each development is based both on engineering practice and third party engineering studies. The fundamental method of financing the cost of new infrastructure under this policy is that a new development which triggers the need for a certain piece of infrastructure must pay for the entire cost of the new infrastructure, after which the Town requires future developers to reimburse to the first developer for each future developer's proportional share.

In the case of RMCC, the site where the church has been developed has several existing developments surrounding it. To the west of the church site is the Countryside Subdivision and to the north of the church site is the Meadowlark Business Park, Filings 1 and 2. To the west of the existing Meadowlark business park (northwest of the church site) is the future Meadowlark Business Park Filing 3 (a replat of Meadowlark Outlot C). To the west of the Countryside Subdivision is the future Westview subdivision. Both Meadowlark Filing 3 and Westview subdivisions have begun but have not yet finished the land use review process.

In a new development the developer must pay for all public improvements that are built on-site, meaning on the parcel being developed. Public improvements that can also be utilized by other developments by virtue of not being on the developed parcel, or in the case of a roadway located on the edge of a parcel, are considered to be off-site improvements. Typically the first developer must pay for the entire cost of off-site improvements that are required by the development, however, the developer that constructs a particular off-site improvement will be eligible for reimbursement from future developers whose developments utilize the improvements in question. Similarly, if an improvement exists and a development is built which utilizes that improvement, then during the land use review process the Town may ask that developer to reimburse the developer who originally constructed the improvement. Such a reimbursement from one developer to a past developer would be governed by the terms of any MOAPI that the town has entered into with one or both of the developers. It is sometimes the case that the monetary reimbursement transaction occurs between developers, and the money does not flow through the Town. There are also exceptions where the Town agrees to take a cash-in-lieu payment from a developer to satisfy certain requirements of the Town's municipal or land use codes. In the case of the Countryside Subdivision; the Town negotiated a payment of \$33,000 because the developer of Countryside had not constructed certain off-site improvements that are typically required.

By accepting this payment the Town assumed the cost and obligation of constructing those off-site improvements. It should be noted the Town's land use review process has become much more sophisticated and comprehensive since the time that the MOAPI was executed for the Countryside Subdivision, and that staff today would require the construction of all off-site improvements needed to serve the initial development in an area.

A portion of the responsibility to construct off-site improvements that the Town assumed from Countryside Subdivision overlaps with the off-site improvements that have actually been constructed by the RMCC development. To expedite the construction of the church, which was a concern of both the church and the Town, and to provide efficiencies in the construction of Majestic Street by enabling a single project with a single managing entity for both the church's portion of obligation and the Town's portion of obligation, Town staff and the church agreed that the church would extend the limits of its construction of Majestic Street to encompass that portion which was the Town's obligation, and the Town would reimburse the church for the additional costs of construction. This agreement was subject to Board approval, to be canonized in the MOAPI that is currently under consideration.

Town staff has worked with the developer to verify the total construction costs for public improvements associated with this project and to determine which costs and amounts are reimbursable, and by whom. Verification of actual costs to RMCC are shown in Attachment A. Attachment B is a figure showing roadway areas for the newly constructed portions of Majestic Street. In this figure, Area 1 is the portion of Majestic Street that is adjacent to RMCC and is therefore the financial responsibility of RMCC. Area 2 is the portion of Majestic Street that is the responsibility of the parcels on the north side of Majestic Street. Area 3S is the southern half of that portion of Majestic Street which was constructed by RMCC but which was the responsibility of the Countryside Subdivision, and due to the negotiated payment from Countryside, is the obligation of the Town. Area 3N is northern half of that portion of Majestic which was constructed by RMCC but which is the responsibility of the future developer of Meadowlark Outlot C. Area 4 is the south- to west-bound turn lane from Colorado Blvd. onto Majestic St. which is a shared responsibility.

The total cost of public improvements associated with Majestic St. and with these five areas was approximately \$500,000. The exact cost of the public improvements does not match the \$551,582 shown in Attachment A because a portion of the waterline costs included in this number were in fact not public improvements, and therefore have not been included in the calculations shown in Attachment C. The total cost of public improvements has been determined and has been allocated to each area as shown in Attachment C. The allocation of costs is based on several factors, including the proportion of length of a given area to the entire roadway, and the benefit of the improvements that were actually constructed to each area. From this allocation it was determined that the cost of Area 1 was \$175,720. This includes sidewalk that was constructed on the south side of Majestic. Area 2, which is the north side of Majestic adjacent to the existing platted portion of Meadowlark Business, had a total cost of \$115,346. Area 3S, which is the Town's responsibility on behalf of Countryside, had a cost of \$84,412. Area 3N, which is the responsibility of the future Meadowlark Outlot C (or Filing 3), cost \$53,033. Area 4, which is the turn lane, cost \$56,369.

RMCC and staff have agreed that a reasonable cost split for the turn lane usage attributable to the church versus background traffic is 50%-50%. This was determined with the help of a third party traffic study. Therefore, the church will pay for half of the cost of the turn lane and the Town should pay for the other half. The reimbursements from the Town to RMCC should be the cost of Area 3S plus half of the cost of the turn lane (Area 4), which amounts to \$112,597.

The amounts that RMCC built, but which are the responsibility of future developers and therefore should be required by the Town to be reimbursed to RMCC is the total of Area 2 and Area 3N, amounting to \$168,379.

Staff and RMCC have discussed the timing of these reimbursement payments. The Town has proposed to repay RMCC on a 4 year schedule, where the first payment would be due within 30 days of the execution of the proposed MOAPI, then three additional annual payments would follow, for a total of four payments. Each payment would be in the amount of \$28,149.25 and the total of the four payments would be \$112,597. This represents the total amount that the Town would owe to RMCC.

The Town and RMCC have agreed that in future negotiations with future developers, specifically of the lots in Meadowlark Business Park Filings 1 and 2, and the future Filing 3 (Outlot C), the Town will require these developers to reimburse RMCC for a proportional share of the cost of the public improvements that have been installed by RMCC. The payments that future developers make to RMCC will be increased to cover the cost of inflation. Payments shall be increased based on increases of the Engineering News Record Construction Cost Index (ENR CCI). The mechanism by which the payments will be increased is that the required payment amount, at the time of the RMCC MOAPI, shall be multiplied by the ratio of the ENR CCI at the time that the future payment is made to the ENR CCI at the time of the RMCC MOAPI. Town staff and RMCC have agreed that this is a fair mechanism to adjust for the effects of inflation.

To help expedite the timing of the payments that the Town will require of future developers as reimbursements to RMCC, a portion of monies collected for road impact fees in association with building permits on Outlot C of Meadowlark business park, or any lot of the future Meadowlark Filing 3 subdivision of Outlot C shall be held for the purpose of reimbursement to RMCC. Specifically, with this MOAPI the Town agrees to disburse 75% of the collected transportation impact fees to RMCC, subject to budget approval in future years. For any reimbursements paid by the Town from road impact fees, the Town assumes the right to collect said reimbursements, that otherwise would be paid to RMCC, from future development. In no event shall the total reimbursement amount paid to RMCC be more than the total amount of reimbursements from Town and future development as shown on page 2 of Exhibit C and as adjusted per the ENR CCI per the paragraph above.

A final note to be considered regarding this MOAPI is that it is a policy of the Town, per the Administrative directive adopted last year, that development agreements are negotiated at a staff level, so long as they comply with the adopted codes and policies of the Town. There are two reasons that this item is being considered by the Board. Certain improvements should have been made by previous developments but were not required at the time, for reasons unknown to staff. Secondly, the magnitude of the costs that staff is recommending that the Town agree to pay make it prudent to ask the Board for direction and approval.

Legal/Political Considerations:

Staff has discussed this issue and the associated MOAPI with the Town's legal counsel and have been advised that this MOAPI is satisfactory and does not create any legal liabilities that have not been discussed above.

Alternatives/Options:

The Town has several options in considering this issue:

- 1) The Board may do nothing, meaning that the Town will not enter into an MOAPI with RMCC and does not agree to reimburse the church.
- 2) The Board may authorize the Mayor to execute the proposed MOAPI and to obligate the Town to reimburse the church as described in the proposed MOAPI.
- 3) The Board may propose that the terms of the agreement be changed, and authorize the Mayor to execute an agreement with the updated terms.

Staff feels that the Board should choose option two. Based on the negotiations between Town staff and the RMCC developers, option 2 would best serve the interests of the Town while being cognizant of the needs of RMCC and other developers who operate in Frederick.

Financial Considerations:

Agreeing to this MOAPI as proposed above would obligate the Town to reimburse RMCC in the amount of \$112,597, and to require future developers to reimburse RMCC in the amount of \$168,379. The funds for the Town's portion of this reimbursement would come from the Road Impact Fund. Funds are included in the 2009 adopted budget to make the initial payment of \$28,149.25.

Staff Recommendation:

Staff recommends that the Board authorize the Mayor to execute the proposed MOAPI.